

REMARKS

In this amendment, applicants respond to the Office Action mailed October 31, 2007. Applicants have not further amended the claims in this response. In the Office Action, the Examiner conceded that claim 1 (and its dependent claims) as previously amended overcomes the anticipation rejection based on Midler (U.S. Patent No. 5,314,506) but the Examiner rejects those claims as not being supported by the original specification or claims. Applicants argue here that claim 1 is adequately supported by the specification. Applicants also suggest here that the Examiner's view of Midler is incorrect with respect to the issue of impingement and the rejection of independent claims 5 and 7. The Examiner indicated in the Office Action that independent claim 2 is allowable.

Claim Rejections 35 USC §112

The Examiner rejects claims 1 and 9-14 under 35 USC 112, first paragraph, as failing to comply with the written description requirement. The Examiner states that the claims recite the mixing of the first solution with the second solvent taking place "outside of said chamber of said comminuting apparatus" which the Examiner states does not have support in the original disclosure or claims.

Applicants respectfully disagree with the Examiner and believe that the language in question has support throughout the disclosure. For example, in paragraph [0117] of the published application, it is stated "That is, the chemical reaction that takes place to create the suspension **has already occurred at some point prior to** the suspension flowing through orifice 102 [i.e. the entry point to the apparatus, see Fig. 18] to create jet

104” (emphasis added). In accordance with this statement, Fig. 18 identifies a “suspension from either method A or method B”, referring to a suspension prepared according to Method A or Method B that is **shown outside the apparatus and directed to entering orifice 102 of the apparatus**. Thus, both the text and the drawings explicitly support the claims (see MPEP 2163 “An applicant shows possession of the claimed invention by describing the claimed invention with all of its limitations using such descriptive means such as words, structures, figures, diagrams and formulas that fully set forth the claimed invention.”) Applicants submit that the disclosure provides support for the language in question of claim 1. As the Examiner has indicated that this version of claim 1 overcomes prior art rejections and the written description rejection is overcome in this response, Applicants believe that claim 1 and its dependent claims are now allowable.

Claim Rejections 35 USC § 102

The Examiner rejects claims 5,7,18-21 and 26-28 as being anticipated under 35 USC 102(b) by Midler et al (US Patent No. 5,314,506). The Examiner refers to Figures 2 and 3 of Midler and suggests that Midler teaches fluid streams that would impact on the surfaces of a chamber and be redirected in the substantially opposite direction which would result in indirect impingement of the streams.

Applicants first re-emphasize that Midler teaches only that the streams must impinge and that Midler has absolutely no recognition of the possibility of indirect impingement, even in the embodiments shown in Figs. 2 and 3 to which the Examiner cites. In Fig. 2 of Midler the nozzles are pointing at an angle down to prevent the

stream from one nozzle from entering the other nozzle (see col. 6, lines 15-41) but the disclosure of Midler makes it clear that any nozzle position must still result in the two fluid streams directly impinging (e.g. “the fluid jets must impinge to create high turbulence impact...”; col. 6, lines 18-21). Thus, Midler teaches that two jet streams impinge to create turbulence that results in crystallization and teaches away from the jet streams impacting on the surfaces of the chamber.

Even assuming that there is some inherent teaching of indirect impingement in Midler, there is no teaching that a first stream flows in a direction that is substantially opposite to a second stream as recited in claims 5 and 7 of the present application. For example, in Fig. 2 of Midler, the nozzles point downwards at an angle of up to 15 degrees (see col. 6, lines 31-41) and, even if some fraction of the stream from either or both of the nozzles impacts the walls of the container, the stream would not be redirected in a substantially opposite direction to the first stream but would be redirected downwards. Therefore, applicants suggest that Midler does not teach the claimed methods of independent claims 5 and 7.

Claim Rejections 35 USC § 103

The Examiner rejects claims 1,5,7,9-11,18-21 and 26-28 under 35 USC 103(a) as being unpatentable over Midler in view of McIlvaine (US Patent No. 3,685,261). The Examiner suggests that Midler teaches fluid streams that would impact on the surfaces of a chamber and be redirected in the substantially opposite direction and also suggests that Midler teaches that the streams do not need to be directly impinging. The Examiner relies on McIlvaine for teaching the use of the Venturi effect.

As detailed above, Midler teaches away from "substantially avoiding direct impingement" and McIlvaine, notwithstanding its disclosure of the Venturi effect, in no way cures the deficiencies of Midler relative to the claims of the present application. Consequently, the combination of Midler and McIlvaine does not make these claims of the present application obvious.

Allowable Subject Matter

Finally, it is noted, with appreciation, that the Examiner has reiterated that claim 2 and its dependent claims are allowable. However, Applicants also submit that based on the foregoing, all of the pending claims are now in condition for allowance. Reconsideration and allowance of such claims are respectfully requested. Applicants propose an interview may facilitate prosecution if the Examiner thinks this would be helpful.

Respectfully submitted,

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